

Introduction by Rep. John Conyers, Jr.

Scandals such as Watergate and Iran-Contra are widely considered to be constitutional crises. They were in the sense that the executive branch was acting in violation of the law and in tension with the Majority Party in the Congress. But the system of checks and balances put in place by the founding fathers worked, the abuses were investigated, and actions were taken - even if presidential pardons ultimately prevented a full measure of justice.

The situation we find ourselves in today under the administration of George W. Bush is systemically different. The alleged acts of wrongdoing my staff has documented- which include making misleading statements about the decision to go to war; manipulating intelligence; facilitating and countenancing torture; using classified information to out a CIA agent; and violating federal surveillance and privacy laws - are quite serious. However, the current Majority Party has shown little inclination to engage in basic oversight, let alone question the Administration directly. The media, though showing some signs of aggressiveness as of late, is increasingly concentrated and all too often unwilling to risk the enmity or legal challenge from the party in charge. At the same time, unlike previous threats to civil liberties posed by the Civil War (suspension of habeas corpus and eviction of the Jews from portions of the Southern States); World War I (anti-immigrant "Palmer Raids"); World War II (internment of Japanese Americans); and the Vietnam War (COINTELPRO); the risks to our citizens' rights today are potentially more grave, as the war on terror has no specific end point.

Although on occasion the courts are able to serve as a partial check on the unilateral overreaching of the Executive Branch - as they did in the recent *Hamdan v. Rumsfeld* decision invalidating the President's military tribunal rules - the unfortunate reality remains that we are a long way from being out of the constitutional woods under the dangerous combination of an imperial Bush presidency and a compliant GOP Congress. I say this for several reasons. The *Hamdan* decision itself was approved by only five Justices (three Justices dissented, and Chief Justice Roberts recused himself because he had previously ruled in favor of the Administration) and was written by 86-year old Justice Stevens. In the event of his retirement in the next two years, the Court's balance would likely be tipped back as he would undoubtedly be replaced by another Justice in the Scalia-Thomas-Roberts-Alito mode favoring an all-powerful "unitary" executive. In the very first hearing held on the decision, the Administration witness testified that "the president is always right" and severely chastised the Court's decision. The Republican Majority also appears poised to use the decision to score political points rather than reassert Congressional prerogatives, as House Majority Leader Boehner disingenuously declared the case "offers a clear choice between Capitol Hill Democrats who celebrate offering special privileges to violent terrorists, and Republicans who want the President to

have the necessary tools to prosecute and achieve victory in the Global War on Terror.”

Thus, notwithstanding the eloquence of the *Hamdan* decision, I believe our Constitution remains in crisis. We cannot count on a single judicial decision to reclaim the rule of law or resurrect the system of checks and balances envisioned by the founding fathers. Rather, we need to restore a vigilant Congress, an independent judiciary, a law-abiding president, and a vigorous free press that has served our Nation so well throughout our history.

Because of the above concerns, I asked my Judiciary Committee staff to prepare the following Report. I made this request in the wake of President Bush’s failure to respond to a letter submitted by 122 Members of Congress and more than 500,000 Americans in July of 2005 asking him whether the assertions set forth in the so-called “Downing Street Minutes” were accurate, and in the aftermath of the disclosure by *The New York Times* in December 2005 and *USA Today* in May 2006 that the President had approved widespread warrantless domestic surveillance of innocent Americans. I asked for this Report to be prepared because I believe it is vital that we document these allegations, learn from our mistakes, and consider laws and safeguards necessary to prevent their recurrence.

I believe it is essential that we come together as a Nation to confront religious extremism and despicable regimes abroad as well as terrorist tactics at home. However, as a veteran, I recognize that we do no service to our brave armed forces by asking them to engage in military conflict under false pretenses and without adequate resources. Nor do we advance the cause of fighting terrorism if our government takes constitutionally dubious short cuts of little law enforcement value that alienate the very groups in this country whose cooperation is central to fighting this seminal battle.

Many of us remember a time when the powers of our government were horribly abused. Those of us who lived through Vietnam know the damage that can result when our government misleads its citizens about war. As one who was included on President Nixon’s “enemies list,” I am all too familiar with the specter of unlawful government intrusion. In the face of these lessons, I believe it is imperative that we never lose our voice of dissent, regardless of the political pressure. As Martin Luther King told us, “there comes a time when silence is betrayal.” None of us should be bullied or intimidated when the executive branch charges that those who would criticize their actions are “aiding the terrorists” and “giving ammunition to America’s enemies,” or when they warn that “Americans need to watch what they say,” as this Administration has done.

It is tragic that our Nation has invaded another sovereign nation because “the intelligence and facts were being fixed around the policy,” and that millions of innocent Americans have been subject to government surveillance outside of proper legal process. However, it is unforgivable that Congress has been unwilling to

examine these matters or take actions to prevent these circumstances from occurring again. Since the Majority Party is unwilling to fulfill their oversight responsibilities, it is incumbent on individual Members of Congress as well as the American public to act to protect our constitutional form of government. It is with that purpose and in that spirit that I am releasing this Minority Report.

I would like to thank the “blogosphere” for its myriad and invaluable contributions to my and my staff. Absent the assistance of “blogs” and other Internet-based media, it would have been impossible to assemble all of the information, sources and other materials necessary to the preparation of this Report. Whereas the so-called “mainstream media” has frequently been willing to look past the abuses of the Bush Administration, the blogosphere has proven to be a new and important bulwark of our Nation’s first amendment freedoms.